

Setting Minority and Women Owned Business Enterprise (M/WBE) Goals on Non-Federal-Aid Construction Contracts

The provisions of New York State Executive Law Article 15-A and Parts 140-145 of Title 5 of the New York Codes, Rules and Regulations ("NYCRR") are applicable to all Non-Federal- Aid State contracts. All such contracts must include M/WBE goals that are derived by assessing the New York State Department of Transportation's (NYSDOT's) Agency MWBE Goal Plan established pursuant to New York State Executive Law Article 15-A and 5 NYCRR Parts 140-145.

These goals are applicable, as follows:

1. Construction contracts greater than one hundred thousand dollars (\$100,000.00); or
2. Contracts greater than twenty-five thousand dollars (\$25,000.00) for professional services.

Establishment of M/WBE Goals

Agency M/WBE Contract Goals for Non-Federal-aid projects.

CONTRACT GOALS

1.

CATEGORY/CONTRACT TYPE	MBE	WBE
Commodities	16.0%	18.0%
Construction Consultants (Architectural/Engineering)	19.0%	7.0%
Construction	8.0%	15.0%
Services/Consultants (Non-Architectural/Engineering)	5.0%	12.0%

2.

Single Operation	4.0%	8.0%
JOC/When and Where	5.0%	10%

3.

Emergency Contracts—Emergency contracts are for a sudden, unexpected, or impending occurrence that requires immediate attention to avoid injury, loss of life, or property damage. Minority and Women Owned Business Enterprise participation is encouraged.

These Contract Goals are based on NYSDOT's Agency MWBE Goal Plan, as a result of programmatic analysis. The Plan is available online at <https://www.dot.ny.gov/main/business-center/civil-rights/mwbe-program>.

When establishing goals, the following statutory factors should also be considered:

Setting Minority and Women Owned Business Enterprise (M/WBE) Goals on Non-Federal-Aid Construction Contracts

- (1) The contract and subcontract scope(s) of work. This may include a consideration of work items, quantity, contract terms, and materials, and whether the contract is a single operation or sole source contract.
- (2) The potential subcontracting opportunities available in the prime contract. This may include a consideration of primary and secondary work operations.
- (3) The relevant availability data contained within the disparity study with respect to the scope of the contract and potential subcontracting opportunities. (Disparity Study: <https://esd.ny.gov/doing-business-ny/mwbe/mwbe-reports>).
- (4) The number and types of certified Minority-Owned and Women-Owned Business Enterprises found in the directory of certified minority-owned and women-owned businesses available to perform the contract work. (The directory is accessible at <https://ny.newnycontracts.com/>).
- (5) The geographic location of the contract performance.
- (6) The extent to which geography is material to the performance of the contract.
- (7) The ability and willingness of certified Minority-Owned and Women-Owned Business Enterprises located outside of the geographic location of contract performance, notwithstanding the regional location of the certified enterprise, to perform on the contract.
- (8) The total dollar value of the work required by the contract in relation to the dollar value of the subcontracting opportunities.
- (9) The relationship of the monetary size and term of the contract to the monetary size and term of the project for which the contract is awarded.

M/WBE Participation Evaluation Process

Project level goal setting is a collaborative process which begins no later than the Advanced Detail Plans Review (ADP) stage of project design per Highway Design Manual Chapter 21 (HDM Ch 21, §21.3.1.8) and involves Regional Design and Construction.


Requests for any M/WBE goal modifications or waivers MUST be approved by OCR.

Pre-Advertisement: As a result of an analysis of the statutory factors in relation to the project, if a goal modification is appropriate and supportable, a waiver request must be submitted to OCR prior to public advertisement of the contract bid documents.

[Pre-Letting Waiver Request Form](#) 

Good Faith Efforts

Setting Minority and Women Owned Business Enterprise (M/WBE) Goals on Non-Federal-Aid Construction Contracts

To assist in developing an appropriate justification see Standard Specification §102.12 H. *Good Faith Efforts* and Good Faith Effort Guidance at [Good Faith Effort Documentation Guide](#) 

For more Information about the Minority and Women Owned Business Enterprise Program contact the [NYSDOT Office of Civil Rights](#), or email us at civilrights@dot.ny.gov.